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REMARKS

With entry of the present amendment, claims 21 - 24, 26, 29, 31 - 36 and 39 - 44 are pending. Claims 1 - 20, 25, 27, 28, 30, 37 and 38 have been canceled. Claims 21, 26, 29 and 33 - 36 have been amended, and claims 39 - 44 are new.

This application was subject to a restriction of the original claims. Applicants have herein retained the right to file further continuation and divisional applications on any non-elected claim and on the subject matter of any claim previously or presently canceled. Pending claims 21, 29, 33 and 41 are independent claims. New matter has not been introduced by the new claims.

Claims 21, 29, 33 and 36 have been amended to recite a cryptic plasmid having a nucleic acid sequence of a specific identity to SEQ ID NO: 1 and SEQ ID NO: 2. Claim 21 has also been amended to incorporate the recitation of now canceled claim 27, that is the improved strain is able to grow at a higher temperature than the corresponding progenitor strain. Claim 29 has also been amended to incorporate the limitation of now canceled claim 30, wherein the *Enterobacteriaceae* progenitor strain is from the genera of *Pantoea*, *Enterobacter*, *Erwinia* or *Gluconobacter*. Claim 33 has been amended to recite that the improved strain is able to grow at higher temperatures than the progenitor strain. The term "progenitor" has been added where appropriate in claims 29, 33, 34 and 35.

New claim 39 depends from claim 21 and recites that the progenitor strain is a *Pantoea* strain. New claim 40 depends from claim 33 and recites a cryptic plasmid having a nucleic acid sequence of SEQ ID NO:1 and SEQ ID NO:2.

New claim 41 is directed to a method for obtaining an improved *Pantoea* strain comprising obtaining a *Pantoea* progenitor strain which includes a cryptic plasmid having a nucleic acid sequence which encodes a polypeptide having the sequence of SEQ ID NO: 3, and eliminating the cryptic plasmid from the *Pantoea* progenitor strain thereby obtaining an improved *Pantoea* strain. Support is found at pages 2 and 4 of the disclosure. Claims 42 - 44 depend from claim 41. Claim 42 defines the *Pantoea* progenitor strain as a *P. citrea* strain; claim 43 recites that the improved *Pantoea* strain is able to grow at a higher temperature than the progenitor strain; and claim 44 recites that the cryptic plasmid has the nucleic acid of SEQ ID NO: 1 and SEQ ID NO: 2.

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Objection to the Drawings -

Applicants acknowledge the withdrawal of the objection to the drawings.

Claim objections:

Applicants thank the Examiner for pointing out the inadvertent mistake of referring to ATCC accession number 39410. As stated by the Examiner, the correct number is ATCC accession number 39140.

Rejections under 35 U.S.C. §112, first paragraph:

Claims 21 - 25 and 27 - 38 have been rejected as failing to comply with the written description requirement. Applicants have amended the base claims to recite a cryptic plasmid having a certain sequence identity to both SEQ ID NO:1 and SEQ ID NO: 2 and Applicants submit the claims do comply with the written description requirement and do not include new matter.

Claim 21 not only defines a plasmid having the structural features having at least 90% sequence identity with SEQ ID NO: 1 and SEQ ID NO: 2, but also that the elimination of a plasmid having such features results in an improved strain able to grow at a higher temperature than the corresponding progenitor strain.

Claims 21 - 24, 26 and 29 - 35 have been rejected under the enabling requirement.

Claim 25 has been rejected because while the claim refers to a biological deposit, the disclosure does not indicate that such a deposit has been made. While this claim has been canceled (and Applicants have reserved the right to reinstate this type of claim in a further application) it is pointed out that the deposit is available from ATCC.

Rejections under 35 U.S.C. §102:

Claim 27 has been rejected under 35 U.S.C. §102(b) as being anticipated by either one of Sykora et al. (1989) or Yoshikawa et al., (1967), and further claims 27, 28, 37 and 38 have been rejected under 35 U.S.C. §102(b) as being anticipated by Sonoyama et al., (1987) (USP 4,696,897) as evidenced by Bilic et al., (1997) and ATCC accession numbers 31626 and 31628.

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This rejection is considered moot in light of the cancellation of claims 27, 28, 37 and 38.

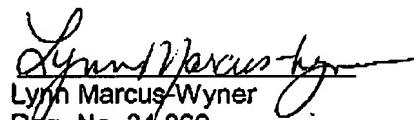
Rejection under 35 U.S.C §101:

Claims 27, 28, 37 and 38 have been rejected as directed to non-statutory subject matter. As stated above claims 27, 28, 37 and 38 have been canceled, and therefore the rejection is considered moot.

Applicants contend the pending claims are in conditions for allowance and allowance of the claims is kindly solicited. If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 846-7620.

Respectfully submitted,

Date: October 14, 2004


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